

0215.3 Employment/Pre-Employment Criminal History Checks**Category A**

As identified in this category, criminal history records provided for employees or applicants will include all available information on arrests, whether or not there was a resulting conviction (except arrests that resulted in successfully completed diversion programs or exoneration).

CANDIDATES SUBJECT TO CRIMINAL HISTORY CHECKS

APPLICABLE CLASSIFICATIONS/POSITIONS	CHECK INITIATED UPON	CHECK LEVELS
State Park Peace Officers	Application	CII/FBI
Public Safety Dispatchers and Dispatchers	Application	CII/FBI
All Department employees or volunteers involved in the processing of/or <u>access</u> to criminal justice offender records, CLETS terminals, or transmittal communication. (CCR 703[d], 707[b]) This includes, but is not limited to, Notice to Appear, arrest reports, criminal history records generated from fingerprint and/or *CLETS inquiries, and confidential administrative messages.	Application	CII/FBI

*California Law Enforcement Teletype System (CLETS) Operating Policies Procedures Manual, Section 1.7.4 specifically states:

"All persons, including non-criminal justice technical or maintenance personnel, with access to CLETS or to Criminal Offender Record Information (CORI) are required to undergo a background check."

"This also includes agency (Department of Parks and Recreation) personnel who obtain CLETS or criminal offender information via another criminal justice agency's terminals" (including telephone/radio requests)."

"Visitors to restricted areas such as dispatch centers or peace officer report writing areas where such confidential data is stored or accessible must be escorted at all times."

Sections 1.7.3 - 1.7.5 of the CLETS manual requires that personnel authorized to have access to terminal locations "shall be subject to character/security clearance that shall include the following":

- Department of Motor Vehicles – California Driver's License check.
- Department of Justice (DOJ) – Bureau of Criminal Identification, Criminal Identification and Information (CII) fingerprint check.
- Federal Bureau of Investigation (FBI) fingerprint check.

In accordance with the above information, under the authority of California Code of Regulations (CCR) Sections 701(f) - 703(d) and 707(b), the Department will conduct criminal history checks.

The key criterion for classifying an employee or applicant under Category A is accessibility to CORI. CORI is any criminal offender information including, but not limited to, arrest reports, criminal history printouts, DOJ arrest and disposition court documents, and CLETS terminal information, either visually displayed or printed data.

CCR 703(d) states that records checks shall be conducted on all personnel hired after July 1, 1975 who have access to Criminal Offender Record Information (CORI).

CCR 707(b) further includes personnel who ". . . have access to the computer system, its terminals, or stored Criminal Offender Record Information."

Category B

In this category, criminal history records provided for other employees or applicants identified below will reflect only arrests that resulted in a conviction, and/or arrests that indicate active prosecution.

CANDIDATES SUBJECT TO CRIMINAL HISTORY CHECKS

APPLICABLE CLASSIFICATIONS	CHECK INITIATED UPON	CHECK LEVELS
Licensed Boat Operators	Application	CII/FBI (Required)
Camp Hosts	Application	CII (FBI option if residency outside CA in last three years.)
Persons who have direct supervisory control responsibilities over minors. Examples include seasonal lifeguards, park aids, volunteers, and docents responsible for junior lifeguards, junior rangers and nature walks with minor age children. (Penal Code 11105.3 directs criminal history checks in this regard re: "sex crimes", "lewd and lascivious conduct", "drug crimes", or "crimes of violence".)	Offer of Employment	CII (FBI option if residency outside CA in last three years.)

<p>Department employees or volunteers not specified above with money handling, and/or positions of special trust or security responsibilities. These positions may include, but are not limited to, persons handling large sums of cash/checks, or unsupervised access to firearms, State property (tools, equipment, warehouse supplies) or security systems (master keys, alarms, etc.).</p>	<p>Offer of Employment</p>	<p>CII (FBI option if residency outside CA in last three years.)</p>
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Access

According to the Attorney General's informal opinion of CCR 703(d), the term "access" applies to all employees who have "physical access" to files or equipment, stating, "The example of a janitor or maintenance worker who is alone and unsupervised in an office perfectly demonstrates the rationale of applying CCR 703(d) to both authorized and unauthorized personnel." It is important not to confuse automated CLETS criminal history checks with this fingerprint card process. Record checks are not made by automated Teletype for employment purposes; they must be "manually" submitted by fingerprint cards or Live Scan fingerprints.

Access to Firearms

All employees who have access to firearms are regulated under the Federally Omnibus Consolidated Appropriations Act of 1997 (18-USC 921.922 et seq.). The Department will not permit any employee to possess, carry, or have access to, any Department firearm or ammunition if a prior conviction of any domestic violence law is identified or if the employee is the subject of a valid domestic violence restraining order. This policy is applicable to volunteers to the same extent as employees. Under the Federal Firearms Acts this policy will generally not apply to volunteers using "antique firearms" or ammunition for antique firearms. "Antique firearms" are defined in Section 921(16) of the Gun Control Act of 1968.¹ This section is consistent with Section 5845(g) of the National Firearms Act, as well as, the definition found in Part 178 – Commerce in Firearms and Ammunition and Part 179 – Machine Guns, Destructive Devices and Certain Other Firearms. Additionally, "ammunition" is defined as "ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm other than an antique firearm". Applicants in this category must complete a DPR 954, Self-Identification and Certification (Figure 0215.3A).

Live Scan Fingerprints

¹ 921(16) The term "antique firearm" means - (A) any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; or (B) any replica of any firearm described in (A) if such replica - (i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or (ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; or (C) any muzzle loading rifle, muzzle loading shotgun, which is designed to use black powder, or a black powder substitute, and which cannot use fixed ammunition. For purposes of this category, the term "antique firearm" shall not include any weapon which incorporates a firearm frame or receiver, any firearm which is converted into a muzzle loading weapon, or any muzzle loading weapon which can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.

DOJ has implemented an automated criminal history check that includes scanning fingerprints directly into a computer. This process, known as "Live Scan", will eventually replace standard ink prints. Live Scan enables the electronic transfer of images with accompanying personal history information directly to the DOJ.

Processing

The District, as the applicant agency, provides the applicant with a BCII 8016, Request For Live Scan Service–Applicant Submission form (Figure 0215.3B) and is responsible for ensuring the form is completed correctly, including any required District-specific numbers. (The District billing number must be provided on the submission form.) The District should inform the applicant that the agency taking the live scan prints may charge an additional fee to scan prints.

LIVE SCAN FINGERPRINTING PROCEDURES

RESPONSIBILITY	ACTION
District	<p>Completes the District information on the BCII 8016 form and gives to the applicant.</p> <p>NOTE: <i>The applicant's job title and one of the following employment descriptions must be written below the "Type of Application" line:</i></p> <ul style="list-style-type: none"> • "Non-Sworn Law Enforcement Agency (LEA) Personnel"– (for Category A employees) • "State Employee" or "Park/Rec Volunteer"–(for Category B employees)
Applicant	<p>Proceeds to the nearest Live Scan site.</p> <p>Presents BCII 8016 form to the Live Scan operator.</p> <p>Follows the site operator's instructions.</p>
Live Scan Operator	<p>Enters the applicant's information from the BCII 8016 form into the database.</p>
Applicant	<p>Ensures the information they provided is entered correctly.</p> <p>Requests a copy of the completed BCII 8016 form for Department records, (to be retained until paperwork is processed and an official record is received).</p>
DOJ	<p>Sends the applicant's Live Scan fingerprint results to the District via fax.</p>

Inked Fingerprint Card Procedure

Complete a FD 258, Fingerprint Card [Figure 0215.3C (1-2)] for both FBI and CII criminal history checks. (Forms BID-7, 7a, 7b, or BID-9 will not be accepted.)

Instructions for completing the FD 258, Fingerprint Card:

1. Under "reason fingerprinted" enter applicant's **position title** (i.e., Park Maintenance Worker, etc.) and **type of employment**. For type of employment use the following descriptions:
 - "Non-Sworn LEA Personnel" – (for Category A employees) or
 - "State Employee", or "Park/Rec Volunteer" – (for Category B employees)
2. Under "Employer and Address" enter hiring District's address.
3. It is unnecessary to fill in the "FBI No.". The remainder of the form is self-explanatory and should be filled out as appropriate.

Processing Fingerprint Cards

When submitting fingerprint cards to the DOJ, a JUS 204, Transmittal Form – Billed (PINK form) (Figure 0215.3D) should be included.

Under "Agency Billing Code", enter the agency billing code that is assigned to hiring District.

Fingerprint Card Processing Service Options

Fingerprint cards may be submitted for processing by using one of the following two service options:

1. Normal Submittal Option

Send fingerprint cards for processing to:

Department of Justice Central Services
P.O. Box 903417
Sacramento, CA 94203-4170

If return clearances have not been received after 45 days, submit a BCII 8043, Applicant Fingerprint Transaction Follow-up Request to DOJ at the above address to request record status.

2. Applicant Expedite Service (AES) Option

The fee charged for this optional service is an additional \$10; however, State clearances can be obtained in as little as 18 days. (FBI clearances take the full amount of time.)

A \$10 fee amount on the JUS 204 form should be included when submitting fingerprints for expedited service.

Send expedited prints to:

Department of Justice
Applicant Expedite Service (AES)
P.O. Box 903347
Sacramento, CA 94203-3470

Criminal Identification and Information Response

DOJ will return criminal history responses directly to the District by mail or to a "Confidential" FAX. These documents are reviewed by the District Superintendent and placed in a sealed manila envelope marked "CONFIDENTIAL" and retained in the employee's Official Personnel File.

DPR 883, Pre-Employment Arrest/Conviction Disclosure Statement – Supplemental Application

To comply with criminal history clearance mandates, all applicants subject to clearance checks under this policy will be required to complete a DPR 883, Pre-Employment Arrest/Conviction Disclosure Statement – Supplemental Application [Figure 0215.3E (1, 2)], upon interview. Applicants will be advised that the information they provide will be reviewed to ensure that they have an acceptable record as a law-abiding citizen and that any criminal offenses that have a nexus (link) to the job applied for may be a basis for rejection from hire.

The DPR 883 will be retained for comparison with return documents from CII/FBI clearance checks to ensure all information was properly disclosed prior to hire or lateral transfer into an identified position under this policy.

DPR 954, Self-Identification and Certification

Applicants for positions that permit access to Department-owned firearms must complete a DPR 954, Self-Identification and Certification form in addition to the DPR 883 form.

Criminal History Information Review

When a criminal history check is returned, the District Superintendent or, for Headquarters, the Superintendent for Public Safety, should confirm the information. Each case must be carefully examined for:

- Nature and severity of the crime,
- When the crime occurred,
- Conviction and sentencing, **and**
- Job classification that the person is being considered for.

Additionally, criminal history information should be compared with information the applicant provided on the DPR 883 and, if applicable, on the DPR 954 form.

NOTE: *Omissions or falsifications on the DPR 883/954 may be considered a basis for rejection from hire or transfer, or termination from employment. Prior to final administrative action, the Superintendent for Public Safety and the Personnel Officer should be consulted.*

0215.31 Billing Procedures

FBI and CII Criminal History Checks

DOJ coordinates billing procedures for FBI and CII criminal history checks. DOJ has assigned billing codes to each District in the Department and bills each directly.

Live Scan

The Live Scan operator must input the District billing number on each applicant's Live Scan transmission to DOJ.

Charges

Type	Category A	Category B
FBI	No Charge	\$24.00
CII	\$32.00	\$32.00
Peace Officer (Firearms eligibility check)	\$ 4.00	Not Applicable
Expedite Process (optional)	\$10.00	Not Applicable
Subsequent Arrest Notification	\$.40	Not Applicable

NOTE: *Live Scan agencies may charge an additional service charge for scanning. Payment of the service charge is the responsibility of the applicant if not a current Department employee or volunteer.*

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Records Retention

Candidates Not Hired

If a criminal history check document is received for a candidate that was not hired but was fingerprinted, return the document to DOJ with "NO LONGER INTERESTED" written on it.

Employees

Criminal history checks and DPR 883 forms will be placed in a sealed envelope and retained in the employee's Official Personnel File. CLETS Policy Manual Section 1.7.5 states that prior to CORI access, Personnel Services must "have a memorandum or other notation placed in the employee's Official Personnel File indicating that authorization has been granted by the agency head to allow the employee such access to criminal record information areas or to operate CLETS equipment".

All employees having such access must have a signed DPR 593, Use of Criminal Justice Information (Figure 0215.32) form retained in their Official Personnel File. The form will indicate the approval of access to CORI information by the District Superintendent/Section Manager.

After separation from District/Section, copies of the record check documents are to be retained for at least two years from the date of rejection from hire, or separation from employment (Govt. Code 12946) as documentation/evidence to support the action, should such action be questioned at a later time.

For record security and destruction processes, follow Title II, Chapter I of the California Code of Regulations, Article 1, Section 702-709 (Ref. DOJ Applicant Clearance Manual).

After separation from employment, the Department no longer has the authority to receive Subsequent Arrest Notifications on that person, therefore the original DOJ records check must be returned to DOJ with "NO LONGER INTERESTED" written on it.

Seasonal Employees

DOJ records checks are returned to DOJ with the notation "NO LONGER INTERESTED" for seasonal employees who are separated at the end of the

season. If these candidates return to work another season, they must be reprinted.

Actual Time Worked (ATW) Employees

DOJ criminal history documents for seasonal employees who are ATW, not separated, are retained in their Official Personnel Files. (Re-fingerprinting is not necessary if an ATW employee returns to work at a later time.) Once ATW employees are separated from the Department, the criminal history record checks are returned to DOJ with "NO LONGER INTERESTED" written on it.

Negligent Records Keeping – Criminal Violations

It is considered a felony or misdemeanor for an employee, having legal access to criminal justice information, to allow any other person to secrete, alter, falsify, destroy, or remove same (GC 6200 and 6201).

It is a felony for a person/employee responsible as custodian of records to violate these codes.

It is a misdemeanor for a person/employee not directly responsible for records, but allowing unauthorized access to them, to violate these codes.

Field Training Records – Peace Officer Candidates Passing Probation

Any field training program phase reports containing daily observation reports, the completed field training guide, and other evaluation and scoring documents used to determine if a probationary peace officer employee has met the qualifications to pass a training requirement shall be kept in a confidential file, SEPARATE from the Official Personnel File, and maintained by the Administrative Chief or designee in a field operation. The Official Personnel File may only include documents that record the fact that the employee has met a training requirement, the date the requirement is met, future training requirement dates, and related training information that does not contain evaluations or scores. The detailed confidential training information will 'follow' the employee when he/she transfers to another district. Records should be kept for three years following completion of the probationary period.